

THE HONORABLE ROBERT LASNIK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, *et al.*,

Plaintiffs,

v.

FRY'S ELECTRONICS INC.,

Defendant.

Case No. 2:10-cv-1562-RSL

CONSENT DECREE

I. INTRODUCTION

1. This action originated with a discrimination charge filed by Mr. Ka Lam with the U.S. Equal Employment Opportunity Commission ("EEOC") in Seattle, Washington. Mr. Lam alleged in his charge that Fry's Electronics, Inc. ("Fry's") terminated him on May 30, 2007, in retaliation for raising a complaint of sexual harassment on behalf of a female subordinate, in violation of Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), 42 U.S.C. § 2000e et seq. The EEOC investigated Mr. Lam's charge. During the investigation of Mr. Lam's charge, the EEOC discovered the related claim of Ms. America Rios. Ms. Rios is the employee who complained to Mr. Lam of sexual harassment by her superior. The EEOC investigated the alleged sexual harassment to which Ms. Rios was subjected.

1 2. The EEOC sent Fry's a Letter of Determination with a finding of reasonable
2 cause that it had violated Title VII based on Mr. Lam's charge of discrimination.

3 3. The EEOC filed this lawsuit on September 29, 2010, in the United States District
4 Court for the Western District of Washington at Seattle on behalf of Mr. Lam and Ms. Rios,
5 alleging that Fry's subjected Ms. Rios to a hostile work environment because of her sex, and
6 terminated Mr. Lam in retaliation for complaining of the harassment of Ms. Rios.

7 4. The parties want to conclude fully and finally all claims arising out of the EEOC's
8 complaint and the charge of discrimination filed with EEOC by Mr. Lam. They enter into this
9 Consent Decree to further the objectives of equal employment as set forth in Title VII.
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11 II. NONADMISSION OF LIABILITY AND NONDETERMINATION
12 BY THE COURT

13 5. This Consent Decree is not an adjudication or finding on the merits of this case
14 and shall not be construed as an admission by Fry's of a violation of Title VII. Fry's expressly
15 denies any wrongdoing of any kind.
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17 IV. SETTLEMENT SCOPE

18 6. This Consent Decree is the final and complete resolution of all Title VII
19 allegations of unlawful employment practices contained in the complaint the EEOC filed on
20 behalf Mr. Lam and Ms. Rios.
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22 V. MONETARY RELIEF

23 7. Settlement Amount
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1 In settlement of this lawsuit, Fry's agrees to provide \$2,300,000. Fry's will provide Mr.
 2 Ka Lam \$1,564,000 in compensatory damages, attorney's fees and lost wages. Defendant will
 3 not condition the receipt of monetary relief on Lam's agreement to: (a) maintain as confidential
 4 the facts and/or allegations underlying his charge and complaint and the terms of this Decree; (b)
 5 waive his statutory right to file a charge with any government agency; or (c) agree to a non-
 6 disparagement and/or confidentiality agreement.

7 In settlement of this lawsuit, Fry's agrees to provide Ms. America Rios \$736,000 in
 8 compensatory damages, attorney's fees and lost wages. Defendant will not condition the
 9 receipt of monetary relief on Rios' agreement to: (a) maintain as confidential the facts and/or
 10 allegations underlying her charge and complaint and the terms of this Decree; (b) waive her
 11 statutory right to file a charge with any government agency; or (c) agree to a non-disparagement
 12 and/or confidentiality agreement.
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15 VI. INJUNCTIVE AND OTHER RELIEF

16 A. General Provisions

17 8. Fry's Electronics, Inc., its officers, agents, managers, assistant managers and other
 18 supervisors and all human resource professionals who provide advice and assistance to the
 19 foregoing individuals are enjoined from engaging in practices which constitute harassment based
 20 on an employee's sex and from retaliating against individuals who oppose discrimination in the
 21 workplace or otherwise assert their rights to make a claim of discrimination. In recognition of its
 22 obligations under Title VII, Fry's shall institute the policies and practices set forth below at all of
 23 its facilities, unless otherwise stated.
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B. Anti-Discrimination Policies and Procedures

9. Fry's shall prevent harassment, discrimination, and retaliation at its places of business as identified in paragraph 8. Fry's shall provide training to its employees, managers, and supervisors so they understand its Equal Employment Opportunity ("EEO") policies and how those policies define and identify what constitutes harassment, discrimination and retaliation, and shall make managers and supervisors personally accountable for its EEO policies.

10. Defendant agrees that, for the pendency of this consent decree, its EEO & anti-harassment policies must contain the following provisions, at a minimum: (i) definitions of discriminatory harassment, with specific reference to harassment based on sex; (ii) include examples to supplement the definitions of harassment based on sex; (iii) provisions for substantial discipline and/or corrective action for incidents of discriminatory harassment; (iv) strong non-retaliation language with examples to supplement the definition of retaliation, (v) provisions for substantial discipline for incidents of retaliation; (vi) provisions that complaints of harassment and/or retaliation will be accepted irrespective of whether they are made verbally or in writing; (vii) explanations that Defendant will conduct a prompt and thorough investigation after a complaint is made or received and, where appropriate, will take remedial action upon conclusion of an investigation; and (viii) a statement that, promptly upon the conclusion of the investigation of a complaint, Defendant will communicate to the alleged victim the results of the investigation and at least a general description of the remedial actions taken or proposed, if any.

Defendant shall effectively disseminate its revised policies and procedures by:

(i) Distributing copies of the policy to all active employees within 30 days of the policy's adoption; (ii) Giving a copy of the policy to and reviewing the policy with all new employees upon the employees' hire.

C. Training

11. Between July 11, 2012, and 90 days after the date of entry of this Consent Decree, Fry's shall provide or shall have provided to all active executives, managers, assistant managers and supervisors nation-wide, and its employees in the state of Washington, no less than two (2) hours of face-to-face training (which may be conducted by video conference) by a qualified trainer on harassment, employment discrimination, and retaliation for engaging in protected EEO activity in the language principally used by its employees in the workplace. A makeup session(s) (which may be conducted by video conference) with a recording of the content of the live session shall be provided to those who did not attend the live session. The makeup session(s) shall include a live, face-to-face question and answer period at the conclusion of the review of the recording.

Annually thereafter for the life of this Consent Decree Fry's will require: all active executives, managers, assistant managers and supervisors nation-wide to complete two (2) hours of training by a qualified trainer on harassment, employment discrimination and retaliation, with a face-to-face question and answer component included in the training (which may be conducted by videoconference). This training may be presented in the same manner as the makeup session(s) described above. Within the State of Washington, all new employees will view the

1 recording of the training provided as described above as part of new associate orientation upon
 2 hire.

3 D. Expungement of Records and Neutral Employment Reference

4 12. Fry's shall not disclose any information or make reference to any charge of
 5 discrimination that is the subject of this lawsuit in responding to employment reference requests
 6 for information about Mr. Lam or Ms. Rios.

7 13. Fry's shall expunge from the personnel files of Mr. Lam and Ms. Rios any
 8 reference to the charge of discrimination against Fry's and this lawsuit. Upon request, Fry's will
 9 provide Mr. Lam and Ms. Rios with a neutral employment reference stating their dates of
 10 employment with Fry's and position(s) held.

11 E. Policies Designed to Promote Supervisor Accountability

12 14. Fry's shall specifically advise all managers and supervisors at all facilities
 13 identified in paragraph 8 of their duty to ensure compliance with its EEO policies, and to report
 14 any incident or complaint of harassment, discrimination, or retaliation, of which they become
 15 aware. If such a manager or supervisor violates the company's EEO policies, he or she may be
 16 subject to discipline up to and including termination and compensation may be affected. Fry's
 17 shall appropriately discipline any such manager or supervisor found by Fry's to have retaliated
 18 against any employee for reporting or relaying any incident of discrimination or retaliation under
 19 the company's EEO policy, or for participating in or conducting an investigation of such an
 20 incident.
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1 15. Fry's shall include "commitment to equal employment opportunity" or similar
 2 designation as a criterion for qualification for evaluation of supervisory positions by
 3 incorporating this concept into the training given under this Consent Decree to executives,
 4 managers and supervisors nation-wide.

5 F. Reporting

6 16. Fry's shall report in writing to the EEOC beginning six (6) months from the date
 7 of the entry of this decree, and thereafter every six months for the duration of the decree the
 8 following information:
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10 a. Certification of the completion of training and list of attendees set forth in
 11 Paragraph 11 above, and a list of all attendees including job titles.

12 b. Certification that its EEO policy has been sent to all active and newly
 13 hired employees as described in Paragraph 10 above.

14 c. A copy of its EEO policy and a list of any changes, modifications,
 15 revocations or revisions to its EEO policies and procedures if any, which concern or affect the
 16 subject of discrimination and retaliation;
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18 d. A summary of all harassment, discrimination and retaliation complaints if
 19 any, filed after the date of entry of this Consent Decree by employees working at any Fry's
 20 facility in the state of Washington, identified by name, and the resolution of each complaint; and

21 e. A copy of each payment made by Defendant as described in Paragraph 7
 22 above.
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G. Posting

17. Fry's shall post a Notice, attached as Exhibit A to this Consent Decree. The Notice shall be posted on the employee notice bulletin board at Fry's facilities in the state of Washington for the duration of the Consent Decree.

VII. RETENTION OF JURISDICTION

18. The United States District Court for the Western District of Washington shall retain jurisdiction over this matter for the duration of the decree.

VIII. DURATION AND TERMINATION

19. This Decree shall be in effect for three (3) years from the date the Court enters this Decree. If the EEOC petitions the Court for breach of the Decree, and the Court finds Fry's to be in violation of the terms of the Decree, the Court may extend the duration of the Decree.

IX. CONCLUSION

20. The parties are not bound by any provision of this decree until it is signed by authorized representatives of each party and is entered by the Court.

Dated this 30th day of August, 2012.

WILLIAM TAMAYO
Regional Attorney

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MOLLY B. POWELL
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Attorneys for Defendant

ORDER APPROVING CONSENT DECREE

The Court, having considered the foregoing stipulated agreement of the parties,
HEREBY ORDERS THAT the Consent Decree be, and the same hereby is, approved as the final
decree of this Court in full settlement of this action. This lawsuit is hereby dismissed with
prejudice and without costs or attorneys' fees. The Court retains jurisdiction of this matter for
purposes of enforcing the Consent Decree approved herein.

Dated this 30th day of August, 2012.



Robert S. Lasnik
United States District Judge

Presented by:

THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

BY: /s/ Molly B. Powell

MOLLY B. POWELL
Attorneys for Plaintiff
Equal Employment Opportunity Commission
Seattle Field Office
909 First Avenue, Ste. 400
Seattle, WA 98104



NOTICE TO EMPLOYEES

This notice is posted pursuant to the settlement of a lawsuit: *EEOC v. Fry's Electronics, Inc.* 2:10-cv-1562-RSL. In accordance with the Consent Decree, Fry's will provide anti-discrimination training to all supervisors and management at its facilities; provide its EEO policy to all employees; implement policies to ensure supervisor accountability with regard to anti-discrimination practices; and report to the EEOC all complaints of sexual harassment or retaliation it receives from Fry's employees in Washington for the next three (3) years.

Federal law prohibits an employer from discriminating against any individual based on the individual's sex with respect to hiring, promotion, demotion, terms and conditions of employment, and/or termination. Federal law also prohibits an employer from allowing any employee to be harassed because of sex. It is also unlawful for an employer to retaliate against any individual because he or she complains of discrimination or harassment, cooperates with the investigation of a discrimination or harassment charge by Fry's or a government agency, participates as a witness or potential witness in any investigation or legal proceeding, or otherwise exercises his or her rights under the law.

Any employee who is found to have retaliated against any other employee because such employee participated in this lawsuit will be subject to substantial discipline, up to and including immediate discharge.

Should you have any complaints of discrimination, you should contact your Store Manager, Assistant Store Manager, Director, or district manager or the Benefits Services Department Manager.

Employees have the right to bring complaints of discrimination, sexual harassment and/or retaliation to the U.S. Equal Employment Opportunity Commission, Seattle Field Office at 909 1st Avenue, Suite 400, Seattle, WA 98104-1061, 206/220-6885, and-1-800-699-4000.

1 **This notice shall remain prominently posted until August 2015, the duration of the Consent**
2 **Decree referred to above. This official Notice shall not be altered, defaced, covered or**
3 **obstructed by any other material.**

4 *EXHIBIT A*
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